THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.5797, 5806 and 5826 of 2007

Dated:26.07.2007

Between:

Mamidipalli sujatha, W/o.Saranganpani,
and others.

…Petitioner

and

The District Collector,
(Panchayat Wing), Warangal, Warangal District,
and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.5797, 5806 and 5826 of 2007

COMMON ORDER:

These Writ Petitions are filed by the Ward Members of Parkal Gram Panchayat. All of them were elected as Ward Members in the panchayat elections held on 29.07.2006 in accordance with the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'), and the Andhra Pradesh Panchayat Raj Conduct of Elections of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad Rules, 1994. All of them filed the present Writ Petitions assailing the proceedings of the District Collector (Panchayat Wing), dated 09.03.2007, whereby and whereunder they were informed that they incurred disqualification under Section 19(3) of the Act to be a Member with immediate effect.

As an illustrative case, the fact of the matter in W.P.No.5797 of 2007 may be noticed. The petitioner was elected as Ward Member in July 2006. The fourth respondent submitted a petition to the District Collector (first respondent) alleging that the petitioner got three children, and therefore, she incurred disqualification under Section 19(3) of the Act. The District Collector issued a show cause notice on 29.01.2007 calling upon the petitioner to show cause as to why action should not be taken against her under Section 19(3) of the Act for having given birth to the third child after specified date under the Act.

The petitioner submitted explanation through her Advocate on 02.02.2007. She contended that she got only two children and the allegation that she gave birth to the third child after specified date under the Act is not correct. After considering the explanation, the District Collector passed orders on 09.03.2007 disqualifying the petitioner and further directing the Mandal Parishad Development Officer to intimate the casual vacancy to the Collector's Office.

In the other two Writ Petitions also the facts are similar, and the orders passed by the District Collector are also similar. Learned Counsel for the petitioners submits that under Section 22(1) of the Act the Executive Authority of the Gram Panchayat has to inform about the complaint of disqualification to the District Panchayat Officer, who shall then intimate the same to the concerned Sarpanch/Ward Member about such allegation of disqualification, in which event, such Member or Sarpanch within a period of two months can seek a decision from the District Court if the allegation is denied. According to the learned Counsel, no power inheres either in the Panchayat Secretary or the District Panchayat Officer or the District Collector straightaway to disqualify an elected candidate. This legal position is not seriously disputed or denied.

In **N.Tirupataiah v. District Panchayat Officer, Nellore**[1], this Court has considered the scope of Section 22 of the Act. Paragraphs 8 and 9 of the reported judgment are relevant and read as under.

> An analysis of above provision would show that i) any voter or authority may make allegation in writing that a member or a sarpanch of Gram Panchayat is not qualified under Sections 17 to 20 of the Act; ii) such an allegation in writing has to be made to the executive authority, which according to Section 2(12) means the panchayat secretary appointed to each Gram Panchayat[2]; iii) on receipt of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the member or sarpanch, who allegedly incurred the disqualification; iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, such member or any other member of the Gram Panchayat, or panchayat secretary or the Commissioner, are entitled to apply to the District Court for a decision as to whether a member or sarpanch incurred disqualification and v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained.
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> A plain reading would suggest that the complainant is not given any liberty to move an application to the District Court. Only four categories of persons or agencies, namely,

> a) the member, who received the intimation; b) any other member; c) the panchayat secretary (executive authority) on a direction of the Gram Panchayat and d) the Commissioner of Panchayat, are entitled to apply to the District Court for a decision. When the whole exercise is initiated at the instance of a "person" i.e. any resident of Panchayat, can it be said that the legislature purportedly intended to deny an opportunity to complainant to approach the District Court when none (sic. any) of the four categories of persons fails to initiate action before the Court? Strict interpretation of the text of the legislation compels one to answer the question in the affirmative but that would render the opportunity given to any person to complain about the disqualification incurred by a member or sarpanch, an empty formality if such a person is not given an opportunity to go to the Court and seek a decision as to whether the elected person against whom the complaint is made incurred disqualification or not. In a situation of this nature, the provision calls for purposive interpretation. The principle of purposive interpretation requires the Court to interpret legislative provision in such a manner, which ensures the proper exercise of a right by the person on whom such right is given and in consonance with the object with which a provision is enacted.

In view of the above, the impugned orders of the District Collector disqualifying the petitioners suffer from grave error apparent on the face of the record. Therefore, the same are accordingly set aside. It shall be open to the District Panchayat Officer concerned to issue a fresh notice of intimation to the petitioners about the alleged disqualification. In such an event, the petitioners shall have two months time under Section 22(1) of the Act to approach the District Court for a decision on the same.

The Writ Petitions, with the above observations, are accordingly disposed of. No costs.

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(V.V.S.RAO, J)

26.07.2007
vs

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[1] 2005 (1) ALT 426

[2] As amended by A.P.Act No.22 of 2002 with effect from 20.06.2002